



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2013

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305-3066

OR2013-21986

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508849.

The City of Conroe (the "city") received a request for a specified police report. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a case that has concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we find the city has demonstrated section 552.108(a)(2) is applicable to the submitted information.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975) (summarizing types of information considered to be basic information), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes, among other items, a detailed description of the offense. See *id.* at 4. We note basic information does not include information subject to section 552.130 of the Government Code. See *id.* at 3-4. Therefore, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

We note the basic information in the submitted report contains information that is subject to section 552.101 of the Government Code.¹ Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. See *id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, however, the requestor describes herself as a counselor/advocate with the Montgomery County Women’s Center. Thus, the requestor may be the authorized representative of the individual whose privacy interest is implicated by the marked information. As such, pursuant to section 552.023(b), the requestor may have a special right of access to the information that would ordinarily be withheld to protect this individual’s privacy interest. See Gov’t Code § 552.023(b) (governmental body may not deny access to person or person’s representative to whom the information relates on the grounds that information is considered confidential under privacy principles). Because we are unable to determine whether the requestor is the individual’s authorized representative, we must rule conditionally. Accordingly, if the requestor is not acting as the individual’s authorized representative, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

requestor is acting as the individual's authorized representative, the city may not withhold the marked information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy to the extent the requestor does not have a right of access to this information under section 552.023 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 508849

Enc. Submitted documents

c: Requestor
(w/o enclosures)